

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego Gas & Electric Company (U 902-E) for a Certificate Of Public Convenience & Necessity Valley-Rainbow 500kV Inter-Connect Project.

Application 01-03-036
(Filed March 23, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING REQUESTS FOR OFFICIAL NOTICE**

On March 6, 2003, San Diego Gas and Electric (SDG&E) filed a request for official notice of two documents: (1) an order of the Federal Energy Regulatory Commission (FERC) and (2) the Otay Mesa Generating Project Monthly Compliance Report (Compliance Report) to the California Energy Commission (CEC). Although SDG&E seeks official notice of a FERC Order, it does not attach that order, but rather attaches material that appears to have been prepared by SDG&E and filed at FERC. The Compliance Report is not signed or dated but covers the period of January 2003. SDG&E does not explain why official notice is sought. The Office of Ratepayer Advocates (ORA) opposes the request for official notice as an "abuse of process." (ORA Response, p. 6.)

SDG&E requests notice of the "FERC Order" pursuant to California Evidence Code § 452(b) and § 452(c). These sections allow for judicial notice of "[r]egulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States" and "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." Because SDG&E has not provided a copy of the FERC

Order for which it seeks official notice, it is difficult to evaluate its request. ORA attached a copy of a letter from FERC, dated February 24, 2003, that accepts proposed tariffs from SDG&E, subject to refund. ORA states that it believes this is the “order” SDG&E refers to. SDG&E’s request only contained copies of SDG&E proposed tariffs, but does not provide sufficient context for what the filing is. I cannot determine whether SDG&E seeks to alert us to the fact that it has made this filing, or whether it intends for to cite the proposed tariffs as facts.

As I described in a July 11, 2002 Ruling on another request for official notice, in

“*People v. Thacker* (175 Cal. App. 3d 594, *; 1985 Cal. App. LEXIS 2861, **), the Court found that it could not take judicial notice of materials prepared by private individuals, even though they are on file with governmental agencies. In addition, the Court found that it could not take judicial notice of hearsay allegations as being true, just because they are a part of a court record or on file with a governmental agency. Rather, the Court may take judicial notice of the existence of such a document on file, but not to the truth of the matters asserted therein.” (July 11, 2002 ALJ Ruling, pp. 3-4.)

In addition, because SDG&E did not present a copy of the FERC Order for which it states it seeks official notice, we cannot grant official notice under the official acts element of the California Evidence Code. Based on my review of the relevant case law, I deny SDG&E’s request for official notice of the February 24, 2003 FERC Order.

Regarding the Compliance Report, SDG&E seeks official notice under California Evidence Code § 452(d) which provides that judicial notice may be taken of “[r]ecords of any court of this state.” The Compliance Report is a document filed with the CEC, a state executive agency, by a non-governmental third party. As described above, the case law indicates that we may take notice

of the existence of such a document on file, but not to the truth of the matters asserted therein.

Therefore, **IT IS RULED** that the request for official notice of a February 24, 2003 Federal Energy Regulatory Commission Order is denied and the request for official notice of the Compliance Report is granted as described herein.

Dated April 7, 2003, at San Francisco, California.

/s/ MICHELLE COOKE

Michelle Cooke
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on all parties of record in this proceeding or their attorneys of record.

Dated April 7, 2003, at San Francisco, California.

/s/ JEANNIE CHANG

Jeannie Chang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

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